

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: _____ - Denver

Date:

APR - 1 1997

In re:

INDEX

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Stacy J. Raper, Esquire
Lau & Choi, P.C.
999 18th Street, Suite 1250
Denver, Colorado 80202

ON BEHALF OF SERVICE: Cathy A. Auble
General Attorney

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
In United States in violation of law (all respondents)

APPLICATION: Asylum; withholding of deportation; voluntary departure

In a decision dated May 16, 1995, an Immigration Judge found the respondents deportable as charged, and denied their requests for asylum and withholding of deportation under sections 208(a) and 243(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1253(h), but granted their request for voluntary departure under section 244(e) of the Act. The respondents have appealed the denial of their requests for asylum and withholding of deportation. The appeal will be sustained.

I. TRANSCRIPT OF PROCEEDINGS

As a preliminary matter, we consider an August 21, 1995, motion by the respondents requesting that the Board take notice of 54 errors contained in the transcript of proceedings and of corrections noted by the respondents' counsel after having compared the transcript with the audio tapes. In a September 19, 1995, response to this motion, the Immigration and Naturalization Service objects to 13 of the 54 proposed changes to the transcript. Service counsel does not allege to have listened to the audio tapes, but states that the objection is made because the proposed changes would affect the meaning of the testimony.

In considering the respondents' motion and the Service's response, we first note that a number of the proposed changes are obviously correct from the context of the testimony. Others clarify the testimony of the adult male respondent (hereinafter "the respondent") but do not materially alter the facts presented by the respondent in support of his asylum claim (p. 24 at line 25; p. 30 at line 14; p. 35 at lines 22-23; p. 41 at lines 6 and 21; p. 45 at line 7; p. 48 at line 23; p. 96 at line 11). Other changes made by the respondent are consistent with the Immigration Judge's statement of the facts. The Immigration Judge noted the respondent's testimony that he was informed by a cousin that he had been blacklisted at the university (p. 50 at lines 12-13 and 19-20; I.J. at 4), [REDACTED] testimony that he believes the respondent may be arrested or killed if returned to Sudan (p. 95 at line 19; I.J. at 4), and the respondent's testimony that the government suspects and mistreats [REDACTED] because the [REDACTED] movement to replace the government was started by [REDACTED] in the south (p. 91 at line 12; I.J. at 2-3). In its brief on appeal, the Service does not challenge any of the factual findings contained in the Immigration Judge's decision but instead rests on that decision. In view of these considerations, and in view of the fact that the Service does not allege that it has listened to the audio tapes and found the proposed changes to be incorrect, we have reviewed the transcript with the corrections proposed by the respondents. We note, however, that the fundamental facts of this case are not materially affected whether any of the proposed changes are considered.

II. THE RESPONDENT'S CLAIM

The respondent is a 40-year-old male native and citizen of Sudan. The respondent included his 30-year-old wife and 11-year-old son on his application as derivative beneficiaries. The respondent claims past persecution and a well-founded fear of persecution on account of his political opinion and on account of his membership in a particular social group, i.e., a black African member of the [REDACTED] tribe from southern Sudan. The respondent reported that he was born in the southern town of [REDACTED] in the [REDACTED] district, in the [REDACTED] province. His religion is Islam, and the [REDACTED] tribe of which he is a member is mainly concentrated in the south, is the [REDACTED] in Sudan, and is estimated to constitute approximately 10 to 15% of the population nationwide (Tr. at 41, 73). The respondent stated that he comes from a prominent family which is well-known in the south, as well as by northern politicians, and which has the tribe's respect. He reported that his [REDACTED] (Tr. at 44-46).

The respondent reported that Sudan had a semi-democratic system prior to the June 1989 military coup. He related that the human rights situation deteriorated immediately following the coup, with the creation of a new security police force solely from members of the National Islamic Front (NIF) and the suspension or abandonment of the constitution, trade unions, student unions, and everything related to a democratic system (Tr. at 9-10). The respondent stated that although the NIF holds power, the government has not adopted the clear Islamic

principles of peace and love for one another regardless of color or ethnic background (Tr. at 11). The respondent testified that while in Sudan, he became a member of the [REDACTED], whose purpose is to liberate the people of the southern region and Sudan as a whole, to stop the systematic ethnic cleansing of the people of southern Sudan, to stop the Arabization of the African people of southern Sudan, and to support democracy, a secular society, and respect for human rights (Tr. at 11-13; Exh. 3 at 5). He never held a position in [REDACTED] and never handed out pamphlets or attended demonstrations, but he attended about six meetings a year (Tr. at 59). The respondent insisted that he never took up arms against the government and is against the use of violence to resolve disputes (Tr. at 13-14).

The respondent reported that he has a [REDACTED] and a [REDACTED] from the [REDACTED] (Tr. at 44). He taught at the university, first in the southern city of [REDACTED] from 1982 to 1988 and then in the northern city of [REDACTED] after classes were no longer offered in [REDACTED] (Tr. at 32-33, 58). The respondent stated that he would express his political opinions to close friends who were colleagues, usually in the cafeteria (Tr. at 34-35). He related that he talked openly to some northerners who, he later discovered, were associated with the government (Tr. at 35). Additionally, the respondent read the [REDACTED] which he received secretly through friends because it was not available through subscription or on the newsstands in Sudan (Tr. at 37-38; Exh. 3 at 6). The respondent now believes that there is a 90% probability that some of the colleagues to whom he spoke openly were spies for the government, and he also believes that someone may have seen him reading the Gazette (Tr. at 37-39).

The respondent explained that following the coup, academics were targeted by the military government. Some lecturers were arrested, tortured, or fired without explanation, and it was not safe to speak out openly against the government within the university (Tr. at 33-34). The government placed pro-Islamic individuals in top administrative posts (such as chancellor) and had individuals spy on the lecturers (Tr. at 36). Each political group kept files on the students (Tr. at 64). The respondent remarked that some students and some other lecturers were also members of the [REDACTED] tribe. He noted that there was a shortage of teachers at that time (Tr. at 34).

The respondent related that on June 15, 1990, he and six other southerners were conversing about politics at a friend's house in northern [REDACTED] when members of secret security entered the house and arrested all of the occupants (Tr. at 15-17; Exh. 3 at 9a). The respondent noted that every home in that area which is occupied by southerners is watched by the neighbors (Tr. at 62). The respondent was taken to a "ghost house," which is a place the government uses to detain, interrogate, torture, and kill people (Tr. at 18). The respondent was questioned regarding his name, tribe, religion, family, job, and other matters (Tr. at 19). When the respondent indicated he was from the [REDACTED] tribe, one of his interrogators stated,

"Okay, [REDACTED]" (Tr. at 19). When the respondent stated he was from the [REDACTED] district, an interrogator said "Okay, from [REDACTED] area." Although the respondent insisted he did not support [REDACTED], the interrogators did not believe him and continued hitting him (Tr. at 20). The respondent testified that [REDACTED], the leader of the [REDACTED] [REDACTED] is a [REDACTED] and is from southern Sudan. Because the [REDACTED] are the tribe that started the war and also because of their large number and their educational background, they are viewed as threats by the government (Tr. at 41-42). Additionally, the respondent stated that because most rebels are from the south, the government classifies southerners as rebels (Tr. at 41). The respondent was detained in the ghost house for 1 month, during which time he was beaten daily (Tr. at 21). The respondent was never charged with any crime, and he does not know why he was released (Tr. at 22).

In July or August 1990, a bus in which the respondent was a passenger on his way home from the university was stopped by security people (Tr. at 23; Exh. 3 at 9b). The respondent believes the bus was randomly chosen (Tr. at 64). However, he also noted that those university lecturers who were loyal to the government were generally given cars or the opportunity to ride in vans to the university, while those who opposed the government were relegated to taking the bus (Tr. at 65). In any event, the respondent came to the attention of the security people when he asked, "Who stopped the bus?" (Tr. at 23-24). The respondent was ordered to stand up and was asked if he had said something (Tr. at 23). After the respondent replied "Yes," he and two other southerners were arrested and taken to the police station. The respondent noted that southerners are recognizable because they are true Africans and have darker complexions than northerners, who are generally a mixed race of African and Arab extraction (Tr. at 24, 40-41). On this occasion, the respondent was taken to a police station and was ordered to undress down to his underwear (Tr. at 25). The respondent related that in his country, this is seen as really humiliating, and he insisted that he would prefer to be beaten than to be publicly undressed (Tr. at 26). In the course of disrobing, the respondent dropped his university identification, which was confiscated by one of the officers and never returned. One of the officers stated that they know the respondent is from the [REDACTED] tribe, that he supports [REDACTED] that he is from the university, and that he has been organizing students against the government (Tr. at 26-27). The respondent admitted to being a [REDACTED] but denied supporting [REDACTED] and organizing students (Tr. at 27). The officers expressed their disbelief, told the respondent they knew his record, and warned him to be very careful. The respondent was released within 2 hours and was never charged with a crime (Tr. at 27-28).

In September 1990, two security men came to the respondent's house while he was at the university. The respondent's father-in-law told the men the respondent was not home, but they responded that they already knew this (Tr. at 29; Exh. 3 at 9c). They entered the respondent's home and started searching through his books and papers in the living room. They did not say what they were looking for, and they took nothing (Tr. at 30). The security people asked the respondent's father-in-law whether the respondent was collaborating with or had contacts with

[REDACTED]

white people, and they intimated that it looked as if he was getting financial assistance from foreigners (Exh. 9c). The respondent's father-in-law denied any involvement on the respondent's part with white people or foreigners. The respondent was terrified by this incident because he felt they could get him at any time (Tr. at 31). He decided to leave Sudan at that time (Tr. at 53).

In late September 1990, the respondent contacted a doctor he knew in Great Britain about getting a scholarship to study abroad (Tr. at 66). He was able to obtain a scholarship from the World Health Organization (WHO) and a J-1 visa (Tr. at 54). The respondent reported that the Dean of his college was a member of the [REDACTED] tribe and therefore was willing to help him unofficially (Tr. at 67). The respondent did not inform the Dean of his true reason for wanting to leave Sudan (Tr. at 67). He did not need the approval of the government to get the scholarship, and the government did not pay for anything (Tr. at 74). The respondent related that at that time, the university was still free from the government's hand and the government did not have such great access (Tr. at 74). The respondent was able to obtain exit permission with the help of an army officer who works with immigration and who is a friend of a relative of the respondent's wife (Tr. at 55).

After coming to the United States in January 1991, the respondent earned a master's degree in [REDACTED] from the University of Colorado (Tr. at 44). The respondent became involved in student activities through groups such as the [REDACTED] (Tr. at 46; Exh. 3 at 16a). He related two incidents which he believes may have been reported to the Sudanese government. The respondent attended a speech regarding the situation in Sudan which was given by a lecturer from southern Sudan who had also been a lecturer at the University of Khartoum. Following the speech, a petition was circulated which asked the United States and the United Nations to intervene in Sudan as they had in Somalia. The respondent signed the petition, but some government supporters did not sign, and the respondent believes they may have reported him (Tr. at 47; Exh. 3 at 16a & b).

With regard to the second incident, the respondent reported that he received a telephone call from [REDACTED] who is a student in the United States, receives financial support from the Sudanese government, and is in favor of the military government in Sudan. [REDACTED] expressed his wish that the respondent and another individual, [REDACTED] would address students at an upcoming political rally and tell them that media reports of human rights violations in Sudan are nonsense. The respondent replied that he would not go before a rally and deny documented facts. The respondent believes that [REDACTED] basically wanted to test him and [REDACTED] (Tr. at 48-50; Exh. 3 at 16c & d). He also believes that [REDACTED] may have reported him to the government.

A29 654 648
A70 691 656
A70 691 657

The respondent testified that he has learned that in 1991, the militia destroyed his hometown of [REDACTED] as part of its ethnic cleansing campaign against [REDACTED] and in order to punish [REDACTED] who is from [REDACTED] (Tr. at 52-53; Exh. 3 at 11b & c). The respondent has not heard from his mother, four siblings, and their children, and he does not know if they are dead or alive. The respondent has tried to determine whether his family members are refugees in Uganda or Kenya (Tr. at 68). Although the respondent sometimes receives letters from his in-laws, these letters are searched (Tr. at 68). He related that his half-brother, a major in the government army, was executed by the government in October 1992 after being accused of collaborating with the rebels (Exh. 3 at 11a). He was never charged with any crime and did not receive a trial (Tr. at 52).

The respondent related that in late 1992, he received a letter from his wife's cousin informing him that he has been blacklisted by the university because he is believed to be a supporter of the rebels (Tr. at 50-51; Exh. 3 at 14). He indicated that the letter had not been tampered with by the government because it was sent through a cousin who works at UNICEF in Khartoum (Tr. at 51; Exh. 3 at 14b). Letters to and from UNICEF are not searched and read as are other letters that leave the country.

Three witnesses testified on the respondent's behalf. The first, [REDACTED] is a naturalized United States citizen who came to this country from Sudan in 1969 (Tr. at 76-82). He related that the Sudanese government is brutal with political dissidents, and he fears the respondent will be executed if he is returned. The government has historically discriminated against people from southern Sudan, especially those from the [REDACTED] tribe, and [REDACTED] are now especially targeted because [REDACTED] is from that tribe. When [REDACTED] met the respondent for the second time during a 1986 visit to Sudan, the country was experiencing a small window of democratic rule and the respondent spoke freely about the situation in Sudan. [REDACTED] noted that the respondent tends to be very loud by nature and can generally be heard in the next room, and he is also opinionated. [REDACTED] believed it to be more than likely that the respondent expressed his opinions to the wrong person. [REDACTED] also states in an affidavit that the current regime uses Islam to continue a genocidal war against the people of southern Sudan, and the fact that the respondent is a Muslim exposes him to worse persecution because the government suspects him of using Islam to escape persecution (Exh. 5f). He also reports that the regime views southerners who are educated as its enemies because they are leaders, and he confirmed that the government targeted the respondent's village for elimination because the opposition leader is from that village.

On April 6, 1995, [REDACTED] testified on the respondent's behalf (Tr. at 85-97). He reported that he came to the United States from Sudan on July 26, 1991, was subsequently granted asylum, and is now a lawful permanent resident. He testified that he also came to the United States on a J-1 visa and that he did not need government approval to obtain the visa

[REDACTED]

although he had to show the consulate the scholarship was approved by the university. [REDACTED] stated that the Sudanese government treats political opponents brutally, subjecting some to detention, torture, and even execution. People who simply oppose the government by having different views are targeted, and the government specifically targets [REDACTED] because the southern leadership mainly draws support from them. [REDACTED] confirmed the respondent's earlier testimony regarding incidents in the United States in which they both refused a request to speak at a rally and in which the respondent signed a petition asking for United States and United Nations intervention in Sudan. Regarding the latter incident, [REDACTED] suspects that some who saw the respondent sign the petition may have been government supporters and may have reported him to the Sudanese government because they asked the respondent why he signed it. [REDACTED] stated that the respondent is outspoken, speaks loudly, and is not afraid to express his opinion. He opined that if the respondent spoke out openly in Sudan, there is a great chance the security forces learned of it, and this would endanger his life.


Also testifying on April 6, 1995, was [REDACTED] a retired geophysicist who spent 3 months in Sudan in 1977 and who has since sponsored refugees from Sudan (Tr. at 97-106). He indicated that the Sudanese government has placed informants throughout all levels of society, including universities, the civil service, and neighborhoods. In a letter, he states that the Sudanese have learned not to complain about the government in letters they send to their families back home or they risk having their families promptly jailed (Exh. 5I).

The respondent submitted into evidence a letter from a representative of the [REDACTED] supporting many of his claims (Exh. 6); a letter, press release, and statement by Congressman Frank R. Wolf (Exh. 5A-D); an affidavit from a fellow Sudanese who has known the respondent for more than 20 years (Exh. 5G); and a number of background articles and reports (Exh. 5).

III. COUNTRY CONDITIONS

The background documentary evidence indicates that Sudan's population is a multiethnic mix of over 500 Arab and African tribes and is composed primarily of two cultures - Arab in the northern and central areas and black African in the south. Sudanese governments have historically been dominated by northern Muslims, and some southern tribal groups, especially non-Arabs and non-Muslims, have demanded greater economic and political power. There is much discrimination by the Muslim Arab majority in the north against southerners who have been displaced by the civil war, and widespread popular attitudes in those areas stereotype dark-skinned non-Arab southerners as inferior and lazy.

In the 1972 Addis Ababa Accords, then-President Jaafar Nimeiri brought an end to Sudan's 17-year civil war between the north and south by granting the "southern region" (the southern third of Sudan) special regional autonomy. However, the civil war resumed in 1983 after




Nimeiri, beginning a program of Islamization of Sudanese institutions, breached southern autonomy and imposed Islamic laws (Shari'a). On April 6, 1985, the 16-year non-democratic government of Nimeiri was overthrown and replaced by a new government, headed by Prime Minister Sadiq al-Mahdi, which pledged to restore democracy and the basic rights of its citizens. Despite this democratic achievement, the civil war in southern Sudan continued unabated, as the rebel SPLM/SPLA escalated military pressure on the central government and called for a new constitution, new elections, repeal of the Shari'a laws, and a more equitable division of political power between the north and historically disadvantaged south.

On June 30, 1989, Sudan's democratic government was overthrown by a group of brigadiers and colonels in the Sudanese People's Armed Forces (SPAF), led by Omar Hassan Ahmed al-Bashir. The new regime took over all of the territory controlled by the Sadiq government, although much of the south remained in the hands of the SPLA/M, led by John Garang. Following the coup, a military regime rules, and the people of Sudan have neither the right nor the ability peacefully to change their government.

The new government suspended legal due process and initially detained without warrants more than 300 people, including many prominent political and academic figures. Decree Two of the emergency laws issued by the government immediately after the coup and still in force, allows the government to hold prisoners without charge or trial. Section seven of the decree bans the "showing of any political opposition by any means to the regime of the Revolution for National Salvation" and allows the authorities to arrest and detain anyone "suspected of being a danger to political or economic security." Detainees in Khartoum are usually held at the security headquarters or in unofficial detention centers known as "ghost houses," where they are commonly beaten upon arrival and tortured during interrogation. Educated people especially have been targets for abuse by the government, and those detained in the years following the coup include doctors, lawyers, judges, academics, civil servants, journalists, engineers, trade unionists, Muslims who advocate secular law, and suspected supporters of the SPLA.

Both before and after the coup, government forces and militias as well as the SPLA/M used excessive force and acted contrary to humanitarian law. In several cases, army units reacted to perceived SPLA/M attacks by ferociously attacking the Dinka sections of nearby towns, killing substantial numbers of villagers. John Garang accused a government militia group of massacring 5,000 civilians, mostly Dinkas, in November 1991 fighting near Kongor and Bor. A four-member peace committee set up by the seven Horn of Africa countries in September 1993 produced a document outlining six principles to help bring about peace, with the two most important principles concerning southern Sudan's right to self-determination and the notion of a secular state in which politics and religion are kept separate.



With regard to academics, there is a history of discrimination against students from the south. In 1989, the University of Juba in the south was transferred to Khartoum in the north due to the war. That same year, only a handful of southerners were admitted to the University of Khartoum. Few academics and teachers were summarily dismissed from their positions immediately following the coup due to the difficulty of finding a sufficient number of academics with the political views required by the government. However, in April 1990, the government dismissed the Vice Chancellors of Sudan's four universities and replaced them with government appointees sympathetic to the regime's fundamentalist line. In the years following the coup, the government has purged the civil service, trade unions, the judiciary, educational institutions, and the media and has created institutional structures which ensure that government supporters have overwhelming influence.

IV. THE IMMIGRATION JUDGE'S DECISION

In his decision of May 16, 1995, the Immigration Judge stated that he does not regard evidence the respondent was "black-listed" by the university to be indicative of persecution in view of the fact that the respondent left his job and never returned (I.J. at 4). The Immigration Judge acknowledged that Sudan has a miserable human rights record, and he noted that both the government and the rebels (whom the respondent supports) have engaged in abuses. The Immigration Judge determined that he could not reconcile the respondent's position as a privileged, educated member of society who comes from a prominent family and whose absence from Sudan was approved by a state school with his claim to be a member of a persecuted minority. The Immigration Judge stated that the fact that the respondent was (supposedly) held by the government on two occasions and then returned to his government employment suggests the government had no interest in him. He noted that the respondent could have been detained indefinitely or fired from his teaching position but was not. Regarding the respondent's departure from Sudan, the Immigration Judge stated that it does not make sense that the respondent needed to obtain an exit visa surreptitiously when the state school had approved his exchange visitor status.

The Immigration Judge noted that the bus incident was a random arrest and, in any event, the Sudanese government has a right to question suspected rebels. The respondent was asked only general questions during his detention, and was not questioned about his activities on campus. The respondent's minimal activities in the United States of signing a petition regarding Somalia and declining to attend a seminar are unlikely to interest the Sudanese government even if it were aware of them. Moreover, a genuine asylum seeker would have applied for asylum shortly after his arrival rather than as a matter of convenience when his exchange visitor status had almost expired.



V. ANALYSIS

A. Credibility

As noted earlier, the respondent related two occasions on which he was arrested and detained by the Sudanese government. In his decision of May 16, 1995, the Immigration Judge did not make a credibility finding. However, he noted the respondent's delay in applying for asylum until he had been in this country for 2 1/2 years. And, in discussing the respondent's arrests, the Immigration Judge noted that the respondent "was (supposedly) held by the government on two occasions" (I.J. at 5). The facts claimed by the respondent in support of his application for relief were presented consistently by him in his Request for Asylum in the United States, in an affidavit submitted in support thereof, and in his testimony before the Immigration Judge. The respondent has not submitted documentary evidence to support events personal to him which occurred in Sudan, such as his two arrests and detentions and the search of his home by Sudanese authorities. However, the respondent presented the testimony of three witnesses, including a Sudanese national who knew the respondent as a university lecturer in Sudan and another Sudanese national who was able to corroborate the respondent's activities in the United States. Additionally, the respondent provided substantial evidence of the general conditions in Sudan. See Matter of H-, Interim Decision 3276, slip.op. at 7-8 (BIA 1996)(finding a credible account of past persecution had been established based on the applicant's testimony, asylum application, and documentary evidence of general country conditions); Matter of Dass, 20 I&N Dec. 120 (BIA 1989) (holding that while testimony alone may suffice, documentation is not optional and corroborative background evidence may well be essential). We have considered the respondent's delay in applying for asylum, but on the basis of the evidence presented in the instant case, and in the absence of an adverse credibility finding by the Immigration Judge, we conclude that the respondent has presented a credible account of his background as a [REDACTED] from southern Sudan, of the circumstances that befell him in Sudan, of his departure from Sudan, and of his activities in the United States.

B. Applicable Standards

An applicant for asylum bears the burden of establishing that he or she meets the "refugee" definition of section 101(a)(42)(A) of the Act. In meeting this burden, an asylum applicant must do more than simply show that he or she was harmed or has a well-founded fear of being harmed. An applicant must demonstrate that the harm was or would be inflicted "on account of race, religion, nationality, membership in a particular social group, or political opinion." Section 101(a)(42)(A) of the Act; see also INS v. Cardoza-Fonseca, 480 U.S. 421, 441 (1987).

Persecution for "imputed" grounds can satisfy the "refugee" definition. Matter of S-P-, Interim Decision 3287, slip.op. at 4-5 (BIA 1996); Matter of A-G-, 19 I&N Dec. 502, 507 (BIA 1987). Additionally, an asylum applicant "does not bear the unreasonable burden of

[REDACTED]

establishing the exact motivation of a 'persecutor' where different reasons for actions are possible." Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988); see Matter of S-P-, supra, slip.op. at 5. Rather, an asylum applicant "bear[s] the burden of establishing facts on which a reasonable person would fear that the danger arises on account of his race, religion, nationality, membership in a particular social group, or political opinion." Matter of Fuentes, supra; see Matter of S-P-, supra. Thus, in this case the standard for review is whether the respondent has produced evidence from which it is reasonable to believe that the harm suffered or the harm the respondent fears suffering was or would be motivated by a protected ground.

This motivation issue involves questions of fact. The asylum applicant, who bears the burden of proof, must present evidence to meet this element of his case. While harm arising from general conditions of strife is not persecution on account of one of the grounds protected under the Act, this Board has acknowledged that persecution can and often does take place in the context of civil war. Matter of H-, supra, slip.op. at 11 (BIA 1996); Matter of Villalta, 20 I&N Dec. 142 (BIA 1990). The evidence in the instant case must be evaluated in the context of the ongoing civil conflict to determine whether the motive for the abuse was directed toward punishing or modifying perceived political views, as opposed to punishment for criminal acts; was part of the violence inherent in an armed conflict (i.e., lawful acts of war); or, was motivated by some other reason unrelated to asylum law. Matter of S-P-, supra, slip.op. at 10. The following elements, among others, may be considered in identifying motive:

1. Indications in the particular case that the abuse was directed toward modifying or punishing opinion rather than conduct, e.g., statements or actions by the perpetrators or abuse out of proportion to nonpolitical ends;
2. Treatment of others in the population who might be confronted by government agents in similar circumstances;
3. Conformity to procedures for criminal prosecution or military law including developing international norms regarding the law of war;
4. The extent to which the laws are defined and applied to suppress political opinion as well as illegal conduct, (e.g., an act may broadly prohibit "disruptive" activities to permit application to peaceful as well as violent expressions of views);
5. The extent to which suspected political opponents are subjected to arbitrary arrest, detention, and abuse.

Id., slip.op. at 10-11.

[REDACTED]

In addition to establishing the fact that an asylum applicant has a belief or characteristic offensive to the alleged persecutor, the applicant must prove that the alleged persecutor has the inclination and capacity to punish the alien for that belief or characteristic. *Id.*, slip.op. at 11. Here we must examine the record for direct or circumstantial evidence from which it is reasonable to believe that those who harmed the respondent were in part motivated by his inclusion in a particular social group or by an assumption that his political views were antithetical to those of the government. An applicant's request for asylum will be granted if he proves eligibility for asylum, there are no mandatory reasons for denying asylum, and relief is warranted in the exercise of discretion. See section 208(a) of the Act; 8 C.F.R. §§ 208.13, 208.14; Matter of H-, *supra*, slip.op. at 5-6.

C. Motivation in the Instant Case

As noted earlier, the respondent reported that he was arrested by security forces on June 15, 1990, was taken to a "ghost house" where he was interrogated and beaten, and was finally released a month later without having been charged with any crime. During his detention and interrogation, his interrogators noted that he came from the same area of the country as [REDACTED], the leader of the [REDACTED]

Emergency laws enacted by the Sudanese government following the 1989 coup ban the "showing of any political opposition by any means" to the current regime and authorize the arrest and detention (without charge or trial) of anyone "suspected of being a danger to political or economic security."¹ Educated individuals targeted for killing by the government have included, inter alia, academics, Muslims who advocate secular law, and suspected supporters of the [REDACTED]. Testimony from the respondent and two of his witnesses, [REDACTED] and [REDACTED] indicates that an educated southerner from the [REDACTED] tribe would be especially targeted by the government because it holds the [REDACTED] tribe principally responsible for having started the war and it views educated individuals as leaders or potential leaders.

The record in the instant case reveals no legitimate reason for the government's June 1990 arrest and subsequent detention of the respondent. Following his arrest, the respondent was taken not to a prison but to an unofficial detention center called a "ghost house" in which prisoners are commonly beaten upon arrival, tortured during interrogation, and sometimes killed. The respondent was interrogated and beaten frequently during his month-long detention

^{1/} Amnesty International, Sudan: Madji Mohamedani-Medical Doctor, AI Index: AFR 54/03/94 (Feb. 25, 1994) (Exh. 5P).

[REDACTED]

He was never charged with any crime. The documentary and testimonial evidence received indicates that the respondent fits the profile of those targeted by Sudan's military regime for arbitrary arrest, detention, and abuse; i.e., he is an academic, a Muslim who advocates secular law, an educated member of the [REDACTED] tribe from the south, and a member of the [REDACTED]

Recognizing that Sudan is in the midst of a civil war, the Immigration Judge suggested, albeit with regard to the respondent's second arrest, that the Sudanese government has the right to question suspected rebels. We find no basis in the record to conclude that the punishment imposed upon the respondent by the Sudanese government was an example of a legitimate and internationally recognized government taking action to defend itself from an armed rebellion. The Department of State's Country Reports on Human Rights Practices for 1995 explain that following the 1989 coup, a military regime rules Sudan, and "[c]itizens do not have the right or the ability peacefully to change their government."² In the years following the coup, a myriad of official and secret government security forces have routinely harassed, detained, and tortured opponents or suspected opponents of the government with impunity.³ Accordingly, we find no basis in the record to conclude that the punishment imposed upon the respondent by the Sudanese government was a legitimate exercise of sovereign authority. See Matter of Izatula, 20 I&N Dec. 149 (BIA 1990).

The Immigration Judge concluded that the respondent's position as a privileged, educated member of society whose absence from Sudan was approved by a state school could not be reconciled with his claim to be a persecuted minority. However, we do not find these facts to present an irreconcilable conflict. First, the respondent received his education and began his career as a university lecturer before the current military regime took power in Sudan. Secondly, the fact that the respondent comes from a prominent southern family which has included some local rulers does not in any way negate the documentary evidence indicating that dark-skinned, non-Arab southerners have historically been disadvantaged economically and politically in Sudan. Finally, the evidence suggests that the military regime has specifically targeted for abuse such educated professionals as doctors, lawyers, and academics.

We also do not find it determinative that the respondent was released from detention and was allowed to continue lecturing at the university. The respondent testified that there was a scarcity of teachers in Sudan at that time, and the documentary evidence indicates that few

2/ Committee on International Relations and Foreign Relations, 104th Cong., 2d Sess., Country Reports on Human Rights Practices for 1995 249 (Joint Comm. Print 1996).

3/ Id.

[REDACTED]

academics and teachers were summarily dismissed from their positions immediately following the coup due to the difficulty of finding a sufficient number of academics with the political views required by the government.⁴ With respect to the respondent's ability to leave Sudan on a scholarship, we note the respondent's testimony that he needed only the approval of the dean of his college, who was also a member of the [REDACTED] tribe, and that he obtained exit permission surreptitiously.

In view of the above, we find that the respondent has produced evidence from which it is reasonable to believe that those who harmed him were motivated at least in part by an assumption that his political views were antithetical to those of the government. Thus, the respondent has met his burden of proving that he was subjected to past persecution.

VI. CONCLUSION

Having established past persecution, the respondent is presumed to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred, conditions in Sudan have changed to such an extent that the respondent no longer has a well-founded fear of being persecuted were he to return. 8 C.F.R. § 208.13(b)(1)(i). No such evidence of substantial changes in country conditions has been submitted in this case. The documentary evidence suggests that in the years following the coup, the government has purged the civil service, trade unions, the judiciary, educational institutions, and the media and has created institutional structures which ensure that government supporters have overwhelming influence.⁵

There being no adverse factors of record, we will favorably exercise discretion in this case in order to grant the request for asylum. Because the respondent's asylum application will be approved, we need not address his application for withholding of deportation pursuant to section 243(h) of the Act. Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). Accordingly, the following order will be entered.

4/ Africa Watch, Academic Freedom and Human Rights Abuses in Africa: An Africa Watch Report, at 62 (November 1990) (Exh. 5N).

5/ Amnesty International, Sudan - 'The Tears of Orphans': No Future without Human Rights, AI Index: AFR 54/02/95 (January 1995).